

OPINION
44-42

April 22, 1944(OPINION)

COUNTY COMMISSIONERS

RE: May Not Appoint Themselves Tax Collectors

Your letter of April nineteenth addressed to the attorney general has been referred to the undersigned for attention and reply.

You state that it has come to your attention in one county of the state that the board of county commissioners have appointed one of their own number as tax collector for a city located in the county with compensation fixed at \$150.00 per month less compensation otherwise payable as a member of the county commissioners. According to the record of the board of county commissioners, all members of the board were present when the contract with the commissioner was made. During the year, or from April 1, 1943, to March 31, 1944, this commissioner received for his services as such tax collector the sum of \$1,345.00. I presume that he received at the rate of \$150.00 per month less such per diem fees as the commissioner may have collected while acting on the board of county commissioners during the said year.

It is the opinion of this office that the county commissioners may not legally enter into such a contract.

It is probable that this board of county commissioners may be acting under the provisions of Chapter 272 of the Session Laws of 1941, which authorize the board to contract with the sheriff of the county, or with any elector of the county, to pay a percentage of such delinquent personal property taxes, on a commission basis not to exceed ten percent. However, such statute does in no way supersede section 9829 of the Compiled Laws of North Dakota for 1913, which provides that:

Every public officer, being authorized * * * * to make any contract in his official capacity, who voluntarily becomes interested individually in such * * *
* contract, directly or indirectly, is guilty of a misdemeanor."

It is our opinion, therefore, that if the board of county commissioners were present and entered into such contract with one of their members have paid a salary out of county funds for the services performed under such contract, such act on the part of the county commissioners is clearly in violation of said section 9829 and is illegal, as well as contrary to public policy.

It is further our opinion that the member of the board acting as such collector is liable for the amount received and the other county commissioners are liable for the amount thus illegally paid.

ALVIN C. STRUTZ
Attorney General